

**TEKER TORRES & TEKER, P.C.**

130 Aspinall Ave., Suite 2A  
Hagåtña, Guam 96910  
(671) 477-9891 Telephone  
(671) 472-2601 Facsimile

**UNPINGCO & ASSOCIATES, LLC**

777 Route 4, Suite 2B  
Sinajana, Guam  
(671) 475-8545 Telephone  
(671) 475-8550 Facsimile

**SHORE CHAN BRAGALONE LLP**

325 N. St. Paul Street, Suite 4450  
Dallas, Texas 75201  
(214) 593-9110 Telephone  
(214) 593-9111 Facsimile

Attorneys for Plaintiffs Nanya Technology Corp. and  
Nanya Technology Corp. U.S.A.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF GUAM**

NANYA TECHNOLOGY CORP. and  
NANYA TECHNOLOGY CORP. U.S.A.,

*Plaintiffs,*

v.

FUJITSU LIMITED and FUJITSU  
MICROELECTRONICS AMERICA, INC.,

*Defendants.*

Case No. CV-06-00025

**PLAINTIFFS' REPLY IN SUPPORT OF  
THEIR MOTION FOR COURT-  
ORDERED MEDIATION**

NOW COME Plaintiffs Nanya Technology Corporation and Nanya Technology Corporation  
U.S.A., (collectively, "Nanya") and reply to Defendants Fujitsu Limited and Fujitsu Microelectronics  
America, Inc.'s (collectively, "Fujitsu") Opposition to Plaintiffs' Motion for Court Ordered Mediation  
("Defendants' Opposition"), and would respectfully show as follows:

**ORIGINAL**

## I. INTRODUCTION

The present action is related to a later-filed action pending in the Northern District of California before Judge Claudia Wilken (the "California Action"). All parties to and claims at issue in the present action are also parties to and at issue in the California Action. Over Fujitsu's objections, Judge Wilken ordered the parties to mediation before retired Judge Edward Infante, who set mediation for May 15, 2007.

Mindful of policies and local rules promoting mediation in this judicial district, Nanya has requested that the Court make the currently scheduled May 15, 2007 mediation applicable to the present action. Doing so would incur no additional costs and afford the parties broader flexibility to utilize Judge Infante's mediation skills in resolving the present action along with the California Action. Despite the judicial economy promoted by Nanya's request, however, Fujitsu vigorously opposes any mediation ordered by this Court. As demonstrated below, Fujitsu's arguments in opposition lack merit and should be rejected.

## II. ARGUMENT

Fujitsu concedes that "mediation in this case would be useful and would encourage the parties to reach a global settlement." *See* Defendants' Opposition at 2. However, despite the opportunity to have the California mediation apply to this action and thus increase the possibility of a prompt resolution, Fujitsu has resisted this potentially efficient option.

### A. FUJITSU'S "BINDING" AND "DETRIMENTAL EFFECT" ARGUMENTS ARE MISLEADING, UNSUBSTANTIATED, AND SELF-CONTRADICTORY

Keying on the word "binding," Fujitsu first argues that "binding" the parties to Court ordered mediation in the present case would undermine "the very purpose and nature of mediation." *See* Defendants' Opposition at 3. No reasonable person, however, could read Nanya's mediation motion as

1 requesting a Court order "binding" the parties to a result recommended by Judge Infante.<sup>1</sup> Nanya  
 2 simply requested that the Court "bind" the parties to participate in the May 15, 2007 mediation in good  
 3 faith to the extent they are already required to do so by Judge Wilken in the California Action. *See*  
 4 Plaintiffs' Motion for Court Ordered Mediation at 2. There is absolutely no impropriety about Nanya  
 5 request that the Court "bind" the parties to mediation. Nanya is authorized to request and the Court is  
 6 empowered to issue such an order pursuant to Local Rule 16.6.<sup>2</sup>

8 Next, Fujitsu argues that this Court ordering mediation will cause a "detrimental effect" on the  
 9 mediation process. *See* Defendants' Opposition at 2-3. Fujitsu, however, offers no evidence to  
 10 substantiate any "detrimental effect." Instead, Fujitsu offers only speculation that if this Court were to  
 11 order mediation it could "significantly undermine or restrict Judge Infante's ability to conduct the  
 12 California mediation." *See id.* at 4. Fujitsu ignores the fact that the same causes of action in the  
 13 present case are already the subject of mediation before Judge Infante. Furthermore, Fujitsu appears to  
 14 now repudiate its prior position that mediation "would be useful and encourage the parties to reach a  
 15 global settlement." *See id.* at 2. Incredibly, without having even contacted Judge Infante, Fujitsu is  
 16 already questioning his ability to mediate a dispute where the same claims are being litigated in two  
 17 venues.  
 18

20 **B. JUDGE INFANTE IS AMENABLE TO APPLYING THE CURRENTLY SCHEDULED MEDIATION TO**  
 21 **BOTH THE GUAM AND CALIFORNIA ACTIONS**

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25 <sup>1</sup> If Nanya's use of the word "binding" in its mediation motion were in any way ambiguous,  
 26 Fujitsu's counsel could have simply called Nanya's counsel and asked for clarification. No such call or  
 27 request was ever made.

28 <sup>2</sup> Local Rule 16.6 permits "any party" to "request for a settlement conference ... held before a  
 neutral judge .... The Court may require, by Order issued prior to the settlement conference, the client  
 or its authorized representative to personally attend the conference. Each party appearing at all  
 conferences shall have full authority with respect to all matters on the agenda, including settlement of  
 the action or proceeding."

1 Judge Infante, is amenable to applying the scheduled May 15, 2007 mediation in the California  
2 action to both the Guam and California actions. Fujitsu's allegation that "Nanya as made no real effort  
3 to obtain Judge Infante's consent" is completely without merit. *Id.* Indeed, Judge Infante's office has  
4 indicated that Judge Infante is amenable to mediating any issues requested by the parties. *See*  
5 Declaration of Cathy Akins, ¶ 3, attached hereto as Exhibit A. Therefore, Fujitsu's contention that  
6 Nanya is requesting this Court to improperly compel Judge Infante to undertake mediation of the  
7 Guam case without his consent is directly refuted by the facts. *Id.*

8  
9 Moreover, Fujitsu's argument that "a motion would be necessary only if Judge Infante  
10 requested formal authorization from this Court to conduct mediation in the Guam action" is an  
11 insupportable reading of Judge Manibusan's statements. A close reading of the transcript demonstrates  
12 that Judge Manibusan's primary concern is ascertaining the mediator's willingness to have the  
13 mediation apply to both the California and Guam actions. *See* Transcript of Pleadings ("Transcript"),  
14 pp. 88-90, attached hereto as Exhibit B. Judge Manibusan has clearly expressed this Court's openness  
15 to assisting and facilitating the process by means of a formal appointment or order. *Id.* at 90.  
16 Consistent with its past practice of delay, Fujitsu's self-serving interpretation of Judge Manibusan's  
17 statements unnecessarily thwarts a prompt and efficient resolution.  
18

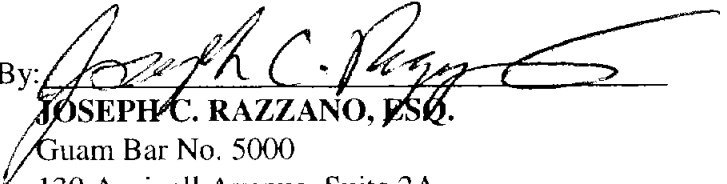
### 19 III. CONCLUSION

20  
21 Fujitsu does not and cannot present a single compelling reason why this Court cannot order  
22 mediation between the parties. Such an order would move the parties toward resolution or, at a  
23 minimum, permit the parties the opportunity to define more specifically their positions. Instead of  
24 facilitating this process, Fujitsu remains hesitant and prefers to engage in procedural wrangling. Such  
25 posturing demonstrates a lack of good faith. Nanya recognizes the need for judicial economy and,  
26 therefore, respectfully requests the Court to issue an order applying the California mediation before the  
27  
28

1 Honorable Judge Infante on May 15, 2007 to this case, and that any resultant settlement be binding in  
2 both the Guam and California cases.

3  
4 Dated at Hagåtña, Guam on April 23, 2007 Respectfully submitted,

5 **TEKER TORRES & TEKER, P.C.**

6  
7 By:   
8 **JOSEPH C. RAZZANO, ESQ.**  
9 Guam Bar No. 5000

10 130 Aspinall Avenue, Suite 2A

11 Hagåtña, Guam 96910

12 Telephone: (671) 477-9891-4

13 Facsimile: (671) 472-2601  
14  
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## **EXHIBIT A**

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**TEKER TORRES & TEKER, P.C.**

130 Aspinall Ave., Suite 2A  
Hagåtña, Guam 96910  
(671) 477-9891 Telephone  
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Sinajana Mall, Suite 12B  
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(214) 593-9110 Telephone  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF GUAM**

NANYA TECHNOLOGY CORP. and  
NANYA TECHNOLOGY CORP. U.S.A.,

*Plaintiffs,*

v.

FUJITSU LIMITED and FUJITSU  
MICROELECTRONICS AMERICA, INC.,

*Defendants.*

Case No. CV-06-00025

**DECLARATION OF CATHY A. AKINS**

I, CATHY A. AKINS, hereby declare as follows:

1. My name is Cathy A. Akins. I am over the age of 21 and am competent to make this declaration. All of the statements set forth herein are true and correct and are based on my personal knowledge.

2. I am a paralegal with the law firm of Fliesler Meyer LLP in San Francisco, CA, which represents Defendants Nanya Technology Corporation and Nanya Technology Corporation U.S.A.

1 (collectively "Nanya") in *Fujitsu Limited, et al. v. Nanya Technology Corp., et al.*, Civil Action No.  
2 4:06-CV-06613 (CW), in the Northern District of California, Oakland Division (the "California  
3 Action").

4 3. The Honorable Edward A. Infante (Ret.) has been designated as the mediator in the  
5 California Action. On April 19, 2007, I conferred with Sandra B. Chan, an ADR Specialist and  
6 assistant to Judge Infante at JAMS in San Francisco. She stated to me that Judge Infante is amenable  
7 to mediating any issues/matters requested by the parties, including the application of the scheduled  
8 May 15, 2007 mediation in the California action described in paragraph 2, to also include the Guam  
9 action, described herein as Case No. CV06-0025.  
10

11  
12 Dated: April 20<sup>th</sup>, 2007.

  
Cathy A. Akins



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## **EXHIBIT B**

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**FILED**

DISTRICT COURT OF GUAM

MAR 12 2007

MARY L.M. MORAN  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

\* \* \*

NANYA TECHNOLOGY CORP., and  
NANYA TECHNOLOGY CORP. U.S.A.,

Plaintiffs,

vs.

FUJITSU LIMITED, FUJITSU  
MICROELECTRONICS AMERICA, INC.,

Defendants.

CIVIL CASE

NO. CV06-00025

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE JOAQUIN V. E. MANIBUSAN, JR.,  
Magistrate Judge

HEARING ON MOTIONS

FRIDAY, MARCH 2, 2007

\* \* \*

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

**COPY**

1 APPEARANCES:

2

3 **FOR THE PLAINTIFFS:**

4 LAW OFFICES OF TEKER, TORRES & TEKER  
5 BY: JOSEPH C. RAZZANO, Esq.  
6 Suite 2A, 130 Aspinall Avenue  
Hagatna, Guam 96910

7 and

8 LAW OFFICES OF UNPINGCO & ASSOCIATES  
9 BY: JOHN S. UNPINGCO, Esq.  
Sinajana Mall, Suite 12B  
Sinajana, Guam

10 and

11 LAW OFFICES OF SHORE, WEST & FREEMAN  
12 BY: KENNETH E. SHORE, Esq.  
2020 Bill Owens Parkway, Suite 200  
Longview, Texas 75604

13 and

14 LAW OFFICES OF SHORE, CHAN & BRAGALONE  
15 BY: ALFONSO G. CHAN, Esq.  
325 N. St. Paul Street, Suite 4450  
Republic Center  
Dallas, Texas 75201

16

17

18 **FOR THE DEFENDANTS:**

19 LAW OFFICES OF CALVO & CLARK  
20 BY: DANIEL M. BENJAMIN, Esq.  
655 S. Marine Corps Drive  
Tamuning, Guam 96913

21

22 LAW OFFICES OF MILBANK, TWEED, HADLEY & MCCLOY  
23 BY: MICHAEL M. MURRAY, ESQ.  
1 Chase Manhattan Plaza  
New York, New York 10005

24

25

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 HAGATNA, GUAM; FRIDAY, MARCH 2, 2007; 10:05 A.M.

2 \* \* \*

3 THE CLERK: Civil case No. 06-00025, Nanya  
4 Technology Corp., versus Fujitsu, Motion To Compel  
5 Substantive Responses to Plaintiffs' First Requests for  
6 Production to Defendant Fujitsu Microelectronics  
7 America, Inc.; Motion To Clarify Magistrate Judge's  
8 Order and Motion To Compel Substantive Responses;  
9 Motion To Exceed Number Of Interrogatories and Request  
10 for Admissions.

11 Counsel, please state your appearances.

12 MR. UNPINGCO: Yes, Your Honor, John Unpingco,  
13 from Unpingco and Associates on behalf of plaintiffs.  
14 I'll be taking care of the scheduling order.

15 THE COURT: All right.

16 MR. UNPINGCO: And my co-counsel.

17 MR. SHORE: Dennis Shore, Your Honor, I'll be  
18 handling the motion, motion to exceed the number of  
19 interrogatories and request for admissions.

20 THE COURT: All right. There's others,  
21 there's others in the back.

22 MR. RAZZANO: Joe Razzano and Alfonso Chan,  
23 we're going to sit with Mr. Shore on behalf of  
24 plaintiffs.

25 THE COURT: All right.

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 MR. BENJAMIN: Dan Benjamin and Michael Murray  
2 on behalf of the defendants, Your Honor.

3 THE COURT: Good morning.

4 MR. MURRAY: Good morning, Your Honor.

5 THE COURT: Let me gulp some water; I just  
6 took some antibiotics and I need to push that down with  
7 some water.

8 We're here this morning for basically just one  
9 motion. It appears that the other motions have been  
10 resolved and are rendered moot by a stipulation signed  
11 by the parties. And generally, as counsel has said, it  
12 appears that the main issue not yet resolved is the  
13 plaintiff's motion to exceed the number of  
14 interrogatories and requests for admissions.

15 I've reviewed the motion, and the responses.  
16 A couple of things I want to bring out before I hear  
17 from the parties.

18 It seems that the posture of the case at the  
19 present time merely is the complaint that's been filed.  
20 I don't believe there had been an answer to that  
21 complaint other than the motion to dismiss or to  
22 transfer the case to the Northern District.

23 Is that correct, or is that not correct?

24 MR. MURRAY: Yes, that's correct, Your Honor.  
25 Neither defendant has filed an answer yet.

1 plaintiffs of renewing that motion, maybe after  
2 ascertaining from the mediator whether this is an item  
3 which that mediator wants to undertake. Assuming the  
4 mediator wants to take an additional responsibility,  
5 then I think a more appropriate written motion might be  
6 then desired for the court to take any action in light  
7 of plaintiff's objection -- or defendant's objections  
8 this morning.

9 MR. UNPINGCO: So, Your Honor, if I'm clear,  
10 you're giving us permission then to approach the  
11 mediator about the possibility of his being a mediator  
12 for both --

13 THE COURT: Well, I don't have to tell you  
14 that, I think you have the right to approach the  
15 mediator and ask him whether he thinks having the Guam  
16 matter be part of the mediation that he's undertaking  
17 in the Northern District be part of his duties that he  
18 might want to undertake.

19 MR. UNPINGCO: And if he doesn't want to  
20 undertake that responsibility or if he says, I need  
21 something from the court of Guam to undertake that, to  
22 give me that kind of authority, I would like to ask --

23 THE COURT: Well, maybe he should also contact  
24 the defendants and get the defendants --

25 MR. UNPINGCO: The way I'm going to approach

1 this, Your Honor, is that it will be a joint telephone  
2 call, I don't think it's appropriate for one side to  
3 contact the mediator, I think both Mr. Murray and I  
4 could contact the --

5 THE COURT: You could certainly do that, just  
6 say that initially your oral motion was denied, for one  
7 thing there's objection by the defendants. Secondly,  
8 I really don't know whether the mediator wants to  
9 undertake this additional responsibility.

10 MR. UNPINGCO: It is a private, private  
11 mediation.

12 THE COURT: But I'm just saying that I don't  
13 know whether he wants to undertake that responsibility.  
14 To the extent that he does, and to the extent that it  
15 might aid settlement here, it's something that the  
16 court can look at, and can be decided in a formal  
17 motion, with the defendants being given the opportunity  
18 to object to the motion.

19 MR. UNPINGCO: We shall follow your  
20 instruction, Your Honor, and I'll make arrangements  
21 with opposing counsel that we can both have -- talk to  
22 the mediator at the same time.

23 THE COURT: Because I don't think defendants  
24 are objectionable to having the mediator undertake  
25 something to have a global settlement, I think they're

1 in agreement with such an idea.

2 MR. MURRAY: No, we're certainly not, and I  
3 don't think that we need to burden this court with this  
4 issue. I think that we can certainly just talk to the  
5 mediator and hopefully there will be a global  
6 settlement coming out of the mediation, and these  
7 issues will be dealt within the settlement papers.

8 THE COURT: Well, to the extent that the  
9 mediator would like a formal appointment here and  
10 there's no objection from you, then that's something  
11 we can aid in the process of settlement if you'd like  
12 it, really. That's all I'm saying.

13 MR. MURRAY: If the mediator says that he  
14 needs some kind of a formal appointment before he can  
15 discuss the Guam case, I would be surprised by that,  
16 but if that's what happens, then --

17 THE COURT: That's what I'm saying, if he says  
18 he would rather go that route, then we're available to  
19 assist in that regard.

20 MR. UNPINGCO: Thank you, Your Honor, I think  
21 that's a reasonable conclusion to that. Also, we can  
22 work out the details as to the local patent rules with  
23 the opposing counsel. I believe that we can meet and  
24 confer, because some -- the Northern District of  
25 California local patent rules are good, but I think